



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 17291590

Date: SEPT. 3, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a bioethicist, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this employment based “EB-2” immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualifies for classification as an individual of exceptional ability, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual’s services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, regarding substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States

¹ See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

to waive the requirements of a job offer and thus of a labor certification. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree. His occupation qualifies as a profession, and he holds a foreign degree equivalent to a U.S. Ph.D. in biomedical sciences from [redacted] University [redacted] in Belgium. Therefore, we need not consider the alternative claim of exceptional ability. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

After working as a pharmacist for several years, the Petitioner attended graduate school to study bioethics, earning a master's degree at [redacted] University in Sweden and a doctorate at [redacted]. The Petitioner trained at [redacted], first as a doctoral student and then as a postdoctoral fellow, until 2016. He then entered the United States to work as a postdoctoral researcher at the University [redacted]. He still held that position when he filed the petition in December 2018. In 2019, he began working as a clinical ethics fellow and adjunct professor at the [redacted] at [redacted]'s University [redacted] [redacted]. On appeal, the Petitioner asserts that he divides his time between the [redacted] and a research assistantship for the [redacted] Center for Ethics at [redacted] University.

As outlined below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility for a national interest waiver under the *Dhanasar* analytical framework.

In a statement submitted with the initial filing of the petition, the Petitioner states that his “main areas of research interest and focus are . . . ethics of global health research and clinical or healthcare ethics.” In this initial statement, the Petitioner indicates that, upon completion of his postdoctoral fellowship at [redacted] he will soon begin a clinical ethics fellowship at the [redacted] Cancer Center in [redacted] Texas, which will involve “practical training in clinical ethics and conflict resolution in the hospital.” The Petitioner states that he looks forward to “the opportunity of working as an ethics consultant after the fellowship and contributing to patient care in hospital settings.” He does not specify whether he intends to continue working “in hospital settings” after completing the fellowship. He asserts that his “career goal is to be a faculty [member] in a university involved in teaching, research and ethics consultation.”

The Director concluded that the Petitioner met the first prong of the *Dhanasar* framework, regarding intrinsic merit and national importance. We need not revisit this issue in detail because other deficiencies prevent approval of the petition.

A. Well Positioned to Advance the Proposed Endeavor

The Petitioner must meet all eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The Petitioner must therefore show that, at the time he filed the petition in December 2018, he was well positioned to work as an ethics consultant and as a university faculty member.

The Petitioner possesses education consistent with the proposed endeavor, but his training was still incomplete when he filed the petition. The Petitioner indicated that his fellowship in Texas would add to his preparation and give him hospital experience, but the record shows that the Petitioner never undertook that fellowship. The Petitioner has not provided specific information to establish that, at the time of filing, he was well positioned for work in a hospital setting as initially stated.

In a supplemental statement, submitted in response to a request for evidence, the Petitioner states: “at the [redacted] I am the head of research projects. . . . My teaching responsibility as an Adjunct Professor has also given me the expertise and skills to advance my career in the field of bioethics and global health.” The Petitioner describes his work at the [redacted] at [redacted] including responsibilities that appear to be specific to his temporary position there. He states that he is “the head of research projects overseeing and coordinating the student fellows’ projects and organizing monthly research club meetings where fellows present and discuss their research work.”

Any training and experience that the Petitioner received at [redacted] cannot show that he was well positioned to advance the proposed endeavor as of the petition’s filing date, because his work at [redacted] occurred after that date. The submitted materials show that, at [redacted] the Petitioner supervised research projects by undergraduate students and fellows, but in terms of his own research, he remained under the supervision of a mentor at [redacted]. This continuing oversight does not establish that, at the time of filing the petition, the Petitioner was well positioned to undertake independent research. He was still undergoing training which, as described on appeal, continued for at least another two years.

Specifically, the Petitioner’s appeal includes a description of part-time research duties for [redacted] (while the Petitioner remains in [redacted] rather than [redacted]). A [redacted] professor involved in the research states that the Petitioner’s “work and experience on this project coupled with his role as a Clinical Ethics Fellow/Adjunct Professor at [redacted] has . . . set him up well to advance his career.” As noted, all of this experience occurred after the filing date and cannot establish the Petitioner’s eligibility as of December 2018. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). Also, the purpose of an appeal is to identify, specifically, erroneous conclusions of law or statements of fact. *See* 8 C.F.R. § 103.3(a)(1)(v). Because the record contained no information about this position prior to the filing of the appeal, the Director cannot have made an erroneous conclusion regarding the position.

The record shows that the Petitioner has continued to pursue training and accumulate experience that could eventually result in qualification for a university faculty position, but he was not yet well positioned for such employment at the time he filed the petition.

B. Balancing Factors to Determine Waiver’s Benefit to the United States

Dhanasar lists three examples of factors to consider for the third prong: (1) impracticality of labor certification; (2) benefit to the United States from the individual’s contributions; and (3) urgency of the national interest in those contributions. Although this is not an exhaustive list of factors that we may consider, the Petitioner does not propose any alternative measures.

In the denial notice, the Director stated that the Petitioner did not show “a track record of successful research and the significance of [his] proposed work.” The Director also concluded that “the petitioner

has not presented evidence that [his] knowledge or skills are not easily articulated in a labor certification.” The Petitioner does not address the latter conclusion.

The Petitioner asserts, on appeal, that “[h]is specialty pertains to issues critical to US national interest in the medical and public health area affecting all US citizens. And one which is presently in critical need by all Americans.” The Petitioner does not elaborate as to the “critical need” or produce documentary evidence of the urgency of the national interest in the work of bioethicists in his particular research specialty. General statements about the overall importance of the “specialty” cannot establish eligibility for the waiver, because *Dhanasar* does not establish blanket waivers for any specialty.

The Petitioner states: “Aliens who work in their area of exceptional ability will generally substantially benefit [the] national interests of the United States per se.” The Petitioner cites no source for this assertion on appeal, but it appears to relate to an earlier statement that cited various sources concerning other immigrant classifications, which are neither binding on, nor relevant to, adjudications under the classification the Petitioner seeks in this case. By statute, noncitizens of exceptional ability are presumed to be subject to the job offer requirement, with that requirement to be waived on a discretionary, case-by-case basis. This statutory language refutes, on its face, the Petitioner’s assertion that exceptional ability is, or should be, an automatic basis for granting the waiver.²

To establish prior success in his field, the Petitioner states, on appeal, that he “has secured employment by a US employer, the prestigious [redacted] as a Clinical Ethics Fellow – a major accomplishment which is awarded to a select few by merit.” The Petitioner does not support this claim about the importance of his fellowship at [redacted] but even then, the Petitioner was not yet a fellow at [redacted] when he filed the petition, nor did the initial submission show any indication that he intended to be one; the initial submission instead described plans for a fellowship in [redacted] that did not come to fruition.

The Petitioner had previously submitted letters from faculty members at universities where he studied and trained, but no objective evidence to show that his research has had a wider impact or benefited the United States to a greater extent than the intrinsic value of all such research. Because researchers are not presumptively exempt from the job offer requirement, establishing the existence of such research is not sufficient under *Dhanasar*. The Petitioner submits citation figures for some of his published work, but does not correlate the citations to any articulated benefit to the national interest. In his own articles, the Petitioner cited the work of other researchers, but he does not claim to have done so based in the importance of that work rather than its relevance to his own research.

The Petitioner has not established that, on balance, a waiver of the job offer requirement would be beneficial to the United States.

² The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his field. See *Dhanasar*, 26 I&N Dec. at 886 n.3.

III. CONCLUSION

Because the Petitioner has not met the required second and third prongs of the *Dhanasar* analytical framework, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.